IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.1461 OF 2005
WITH
CIVIL APPLICATION 2082 OF 2005

Shri Yusuf Firoz Khan & ors. .. Appellants.
Vs
Shri Abdulla Hussain Mujahid, .. Respondent

Mr Kasim Shaikh, for the appellants.
Mr S.N.Chandrachood for the respondent.

CORAM : D.B.BHOSALE,J.
DATED : 14.09.2007

P.C.:

1. Heard learned counsel for the parties.

2. The original defendants have assailed the judgments of the courts below, by which a suit instituted by the repsondent-plaintiff for declaration that he has exclusive right of enjoying the suit passage as approach way to his property, stands decreed. Mr.Shaikh, learned counsel for the appellants, submitted that the recitals in the sale-deed by which the plaintiff had purchased the property along with passage, have not been interpreted by the courts below in proper perspective. Both the courts have completely overlooked that the sale deed does not state that the plaintiff has exclusive right over the suit property. He then submitted that the defendants also have been using the passage and they do not have any other approach way to their house. He did

not raise any other contention.

3. I perused the judgments of the courts below. In my opinion, both the courts below have considered the evidence on record including the registered sale-deed produced on record by the plaintiff in proper perspective. Merely because the sale deed does not state that the plaintiff has exclusive right to use the suit passage does not mean that the others also have right to use the said passage. The defendants are not party to the sale deed. There was a reference to the passage in the sale deed. The defendants have failed to prove that they also have been using the said passage. It has come on record that the plaintiff does not have any other approach way except the suit passage. As against this, there is a clear finding that there is a public road which the defendants have been using as approach road to their property. Considering that there are concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings, no interference in this appeal is called for. No substantial question of law either raised or involved in the appeal. Hence, the second appeal is dismissed. As a consequence thereof, the civil application is disposed of.

(D.B.BHOSALE,J.)